

Message Text

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DRAFTED BY EUR;SOV;LWILLEMS:REH
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L - JMICHEL (SUBSTANCE)
L - LMARKS (SUBSTANCE)
EUR;SOV - MGARRISON (SUBSTANCE)
S/MS - MSHULMAN (SUBSTANCE)
-----073772 212143Z /15

O 212119Z MAY 78
FM SECSTATE WASHDC
TO AMEMBASSY MOSCOW IMMEDIATE
INFO AMCONSUL LENINGRAD IMMEDIATE
USMISSION USUN NEW YORK IMMEDIATE

C O N F I D E N T I A L STATE 128838

E.O. 11652: GDS

TAGS: ASEC, CGEN, PDIP, UR, US (CHERNYAYEV, RUDOLF)(ENGER,

VALDIK)
SUBJECT: ESPIONAGE ARRESTS - IMMUNITY QUESTION
REF: STATE 127870

1. SOVIET MINISTER COUNSELOR VASEV P;ONED EUR DEPUTY
ASSISTANT SECRETARY LUERS EVENING MAY 20 DEMANDING RELEASE
OF CHERNYAYEV AND ENGER ON GROUNDS THEY HAD BEEN ADMITTED
INTO US WITH DIPLOMATIC PASSPORTS AND MULTIPLE-ENTRY
DIPLOMATIC VISAS ISSUED BY AMEMBASSY MOSCOW. VASEV ARGUED
THAT THE USG HAD RECOGNIZED THEIR DIPLOMATIC STATUS IN
ADMITTING THEM WITH SUCH VISAS, AND COULD NOT SUBSEQUENTLY
CHANGE ITS MIND AND DISAVOW THEIR DIPLOMATIC STATUS.
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2. VASEV INSISTED THAT THE TWO MEN BE RELEASED AT ONCE,
OR ELSE THERE WOULD BE SERIOUS CONSEQUENCES. "WHO KNOWS
WHERE ALL THIS WILL END UP?" HE ASKED.

3. LUERS REPLIED THAT THE CHARACTER OF THEIR VISAS DID NOT
IN ITSELF BESTOW DIPLOMATIC IMMUNITY, AND WHETHER THEY

ENJOYED FULL DIPLOMATIC IMMUNITY HAD TO BE DETERMINED BY THE CONDITIONS UNDER WHICH THEY WORK AS RECOGNIZED BY THE US GOVERNMENT. IN THIS REGARD, LUERS EXPLAINED, THE US CONSIDERS THAT THE UN HEADQUARTERS AGREEMENT CLEARLY

ESTABLISHES THAT CHERNYAYEV AND ENGER DO NOT ENJOY DIPLOMATIC IMMUNITY.

4. FOLLOWING FURTHER RESPONSE IS BEING CONVEYED TO SOVIET EMBASSY MAY 21, AND YOU SHOULD USE IT IF MFA RAISES IMMUNITY QUESTION WITH YOU:

5. "THE STATUS OF UN SECRETARIAT PERSONNEL IS GOVERNED BY THE UN CONVENTION ON PRIVILEGES AND IMMUNITIES, AND THE ONLY UN SECRETARIAT OFFICIALS WHO ENJOY FULL DIPLOMATIC IMMUNITY UNDER THAT CONVENTION ARE PERSONS WITH RANK OF ASSISTANT SECRETARY GENERAL AND HIGHER. CHERNYAYEV AND ENGER ENJOY OFFICIAL ACTS IMMUNITY, I.E., IMMUNITY IN CONNECTION WITH ACTS INVOLVED IN THE EXERCISE OF THEIR OFFICIAL UN SECRETARIAT DUTIES. OFFICIAL ACTS IMMUNITY DOES NOT CONFER IMMUNITY FROM CRIMINAL CHARGES OF ESPIONAGE OUTSIDE THE EXERCISE OF THEIR UN SECRETARIAT DUTIES. CHERNYAYEV AND ENGER DO NOT ENJOY IMMUNITY FROM THE PENDING ESPIONAGE CHARGES AGAIN THEM."

6. IF MFA CITES ANY OTHER GROUNDS FOR IMMUNITY, YOU
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SHOULD SAY THAT YOU WILL REPORT MFA'S POSITION TO THE DEPARTMENT. VANCE

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